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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,313	07/05/2000	Susan Barnett	PP01631.101	4221
27476 7590 04/07/2008 NOVARTIS VACCINES AND DIAGNOSTICS INC. INTELLECTUAL PROPERTY R338 P.O. BOX 8097 Emeryville, CA 94662-8097				
EXAMINER				
ANGELL, JON E				
ART UNIT		PAPER NUMBER		
1635				
MAIL DATE		DELIVERY MODE		
04/07/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/610,313	Applicant(s) BARNETT ET AL.
Examiner J. E. Angell	Art Unit 1635

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 48-51.
Claim(s) objected to: _____.
Claim(s) rejected: 1-40 and 43-47.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/J. E. Angell/
Primary Examiner, Art Unit 1635

Continuation of 3. NOTE: The proposed amendment would change the scope of the claim from encompassing any sequence which encodes a Pol-specific immune response wherein the sequence having a sequence at least 90% identical to the sequence of SEQ ID NO: 30-32 to any sequence which encodes a Pol-specific immune response wherein the sequence "consists essentially of" a sequence at least 90% identical to the "full-length of" the sequence of SEQ ID NO: 30-32. Therefore, the proposed amendment would necessitate further search and consideration of the new claim. Applicant is respectfully reminded that MPEP 714.13 states that Applicants cannot, as a matter of right, amend any finally rejected claims, except when an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some way requires only cursory review by the examiner. In this case, the proposed amendment raises new search and examination considerations that require more than a "cursory review." Therefore, the proposed amendment will not be entered..

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are directed to the claims as they are presented in the proposed after final amendment. For instance, applicants argue that the claim 1 requires that the sequence exhibit 90% identity to the full length of SEQ ID NO: 30-32. However, this new limitation is not present in the pending claims (it is only in the proposed amended claim). Since the amendment has not been entered for the reasons indicated herein, Applicants' arguments are not persuasive.